-131-69-

TRANSCRIPT OF [illegible]

SUPREME COURT OF THE U[illegible]

OCTOBER TERM, 19[illegible]

No. [illegible]

JESSE SPALDING, [illegible]
POST AND [illegible]
ERROR,

vs.

[illegible]

IN ERROR TO THE CIRCUIT COURT OF THE [illegible]
[illegible]

FILED [illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 278.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LOUIS MANASSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Thursday the eleventh day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fourth day of May, 1884, came the plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons and bond for costs in said above-entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. circuit court, north. dist. of Ill., July term, A. D. 1884.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS OF the port and district of Chicago. } Assumpsit. Damages, $500.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises to the damage of said plaintiff in the sum of five hundred dollars, and direct the same to the marshal of said district to execute and make it returnable to the July term of said court, A. D. 1884.

PERCY L. SHUMAN,
Plaintiff's Attorney.

To WILLIAM H. BRADLEY, Esq., *Clerk.*

CHICAGO, *May* 24, 1884.

(Endorsed:) Filed May 24, 1884. W. H. Bradley, clerk.
23303

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, July term, A. D. 1884.

MANASSE
vs.
SPALDING, COLLECTOR, &C. } In assumpsit. $500.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against plaintiff.

Dated this 24th day of May, A. D. 1884.

PERCY L. SHUMAN.

(Endorsed:) Filed May 24, A. D. 1884. W. H. Bradley, clerk.

On the same day, to wit, on the twenty-fourth day of May, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

4 The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs of the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto Louis Manasse of a plea of trespass on the case, upon promises to his damage, as it is alleged, of five hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this 24th day of May, in the year of our Lord one thousand eight hundred and eighty-four and of our Independence the 108th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, collector of customs, Chicago, Ills., therein named, on the 24 day of May, 1884.

A. M. JONES,
U. S. Marshal.
5 By S. C. HAYES,
Deputy.

(Endorsed:) Filed May 29th, A. D. 1884. W. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of June, 1884, came the plaintiff, by his attorney, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the July term, 1884.

Louis Manasse, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of him and by him paid under protest), by Percy L. Shuman, his attorney, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiff heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and
6 eighty-four, at, to wit, the northern district of Illinois made payment to the said defendant, collector as aforesid, of a certain large sum of money, to wit, the sum of one hundred and four dollars and fifty-five cents, lawful money of the United States, as duties, under protest and in order to obtain possession of certain merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified so paid to the said defendant as aforesaid as duties, as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, he, the said plaintiff, being dissatisfied with the decisions of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of his, the said plaintiff's, objections thereto, and that within thirty days after date of the said ascertainment and liquidation as aforesaid,

the plaintiff appealed to the Secretary of the Treasury of the United States.

7 And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeals, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals.

By means whereof and by force of the statutes of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of one hundred and four dollars and fifty-five cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by the said plaintiff as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year, and at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of five hundred dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and

8 then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of five hundred dollars, and therefore the said plaintiff bring this suit, &c.

P. L. SHUMAN,
Plaintiff's Attorney.

(Endorsed:) Filed June 5, 1884. W. H. Bradley, clerk.

Afterwards, to wit, on the seventh day of July, 1884, came the plaintiff by his attorney and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States of America for the Northern District of Illinois, July Term, 1884.

9 JESSE SPALDING, COLLECTOR, &C. *ats.* LOUISA MANASSE. } No. 19023. Assumpit.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., and

says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD TUTHILL,
U. S. Attorney, for defendant.

(Endorsed:) Filed 7 July, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit: on the tenth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, in the following entry, to wit:

Ord.r.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR, &c. } Assumpit.

Now come the plaintiff, by P. L. Shuman, esq., his attorney, and the defendant by the district attorney, and upon issue joined herein by agreement they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence the court takes this cause under advisement.

Afterwards, to wit: on the eleventh day of June, 1885, there was filed in said clerk's office the special finding of the court, in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

U. S. circuit court, northern district of Illinois.

LOUIS MANASSE
vs.
JESSE SPALDING, COL'R, &c.

The court finds from the proof the facts to be as follows, the goods in question were certain anemometers, hygrometers, Rhumkorf coils, aneroid barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, and radiometers. They were entered and claimed as "philosophical apparatus and instruments" dutiable at 35 per cent. ad valorem; the goods were classified by deft. as "manufactures, articles or wares not specially enumerated or provided for in the act of March 3, 1883, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, gold, silver, platinum or any other metal and whether wholly or partly manufactured," and a duty of 45 per cent. ad valorem assessed thereon; the goods were manufactured articles composed wholly or in part of some of the
11 metals enumerated in the act quoted.

The proof shows the instruments involved in this invoice are adapted to the purposes of scientific instruction, and are also capable of being, to some extent, utilized by those sufficiently educated to apply them to certain purposes in the arts. They must therefore be allowed to come

under this general description as "philosophical instruments and apparatus."

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 11, 1885. Wm. H. Bradley, clerk.

12 On the same day, to wit, on the eleventh day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now come the parties by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted, herein finds the issue for the plaintiff, and assesses his damages at ninety-one dollars and thirty-five cents, with interest and costs. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of ninety-one dollars and thirty-five cents, his damages, with interest thereon from the time the same was paid to the defendant, together with his costs in this behalf, amounting to twenty-three dollars and forty-six cents, and that he have execution therefor.

13 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now comes the said defendant by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant, as complained herein.

14 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Louis Manasse is the plaintiff, and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this first day of March, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

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15 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America, to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Louis Manasse, plaintiff (gen. number 1923) and Jesse Spalding, collector of customs, etc., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, etc., defendant, as by his complaint appears; and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States, Jesse Spalding, collector of customs, etc., plaintiff in error, vs. Louis Manasse, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

16 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Louis Manasse, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Jesse Spalding is plaintiff in error, to show

cause, if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf,

Witness the Hon. H. W. Blodgett, dist. judge, presiding in circuit court, this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) 19023 Supreme Court of the United States, Jesse Spalding vs. Louis Manasse, citation to October term, A. D. 18—.

(Indorsement on cover:) No. 279. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Louis Manasse. N. Illinois C. C. U. S. Filed June 8, 1886.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 279.

JESSE SPALDING, COLLECTOR OF CUSTOMS [illegible] PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LOUIS MANASSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 2, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1888.

No. 279.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LOUIS MANASSE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Thursday, the eleventh day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the third day of December, 1884, came the plaintiff, by his attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons and bond for costs in said entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

U. S. circuit court, north. dist. Ill. December term, A. D. 1884.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit. Damages, $1,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises to the damage of said plaintiff in the sum of one thousand dollars, and direct the same to the marshal of said district to execute and make it returnable to the December term of said court, A. D. 1884.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

To WM. H. BRADLEY, Esq.,
Clerk.

CHICAGO, *December* 3, 1884.

(Endorsed:) Filed Dec. 3, 1884. Wm. H. Bradley, clerk.
23302

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1884.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR, &C. } In assumpsit.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may issue against our property for any costs taxed against them.

Dated this third day of December, A. D. 1884.

SHUMAN & DEFREES.

(Endorsed:) Filed Dec. 3d, A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the third day of December, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

4 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto Louis Manasse of a plea of trespass on the case upon promises to his damage, as it is alleged, of one thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this third day of December, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th year.

[SEAL.] W. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, therein named, on the 3d day of December, 1884.

A. M. JONES, *U. S. Marshal.*
5 By R. D. SHERMAN,
Deputy.

(Endorsed:) Filed Dec. 6, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the fifth day of December, 1884, came the plaintiff by his attorneys, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the December term, 1884.

Louis Manasse, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of them, and by them paid under protest), by Shuman & Defrees, his attorneys, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiff heretofore, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and eighty-four, at, to wit, the northern district of Illinois, made payment to
6 the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of two hundred and forty-three dollars and fifty cents, lawful money of the United States, as duties, under protest and in order to obtain possession of certain merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector.

And the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant, collector, illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs, he, the said plaintiff, being dissatisfied with the decisions of the said collector, gave notice, in writing, to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objections thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid,

the plaintiff appealed to the Secretary of the Treasury of the United States.

7 And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that suit has been brought within ninety days after the decisions of the said Secretary of the Treasury on such appeal.

By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of two hundred and forty-three dollars and fifty cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiff as aforesaid; and being so liable the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of one thousand dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff, and being so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and

8 there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of one thousand dollars, and therefore the said plaintiff bring suit, &c.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

(Endorsed:) Filed Dec. 5, 1884. Wm. H. Bradley, clerk.

9 Afterwards, to wit, on the thirty-first day of December, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, December term, 1884.

JESSE SPALDING, COLLECTOR, &c.
ats.
LOUIS MANASSE. } Assumpsit. No. 19354.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when,

etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney, for Defendant.

(Endorsed:) Filed 31 Dec., 1884. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the thirteenth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LOUIS MANASSE,
vs.
JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

Now come the plaintiff, by Percy L. Shuman, esq., his attorney, and the defendant, by the district attorney, and upon issue joined herein by agreement they waive the intervention of a jury, and for trial put themselves upon the court; and after hearing the evidence and the arguments of counsel the court takes this cause under advisement.

11 Afterwards, to wit, on the eleventh day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

U. S. circuit court, northern district of Illinois.

LOUIS MANASSE
vs.
JESSE SPALDING, COL'R, &C.

The court finds from the proof the facts to be as follows: The goods in question were certain anemometers, hygrometers, Rhumkorf coils, aneroid barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, and radiometers. They were entered and claimed as "philosophical apparatus and instruments," dutiable at 35 % ad valorem; the goods were classified by def't as "manufactures, articles or wares not specially enumerated or provided for in the act of March 3, 1883, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, gold, silver, platinum, or any other metal, and whether wholly or partly manufactured," and a duty of 45 % ad valorem assessed thereon, the goods were manufactured articles, composed wholly or in part of some of the metals enumerated in the act quoted.

The proof shows the instruments involved in this invoice are
12 adapted to the purposes of scientific instruction, and are also capable of being, to some extent utilized by those sufficiently edu-

cated to apply them to certain purposes in the arts; they must therefore be allowed to come under this general description as "philosophical instruments and apparatus."

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 11, 1885. WM. H. BRADLEY, clerk.

13 On the same day, to wit, on the eleventh day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now come the parties by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted, herein finds the issue for the plaintiff, and assesses his damages at three hundred and sixteen dollars and ninety cents, with interest and costs.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of three hundred and sixteen dollars and ninety cents, his damages, with interest thereon from the time the same was paid to the defendant, together with his costs in this behalf expended, amounting to twenty-three dollars and forty-six cents, and that he have execution therefor.

14 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry to wit:

Order.

LOUIS MANASSE
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR port and district of Chicago. } Assumpsit.

Now comes the said defendant by the district-attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant as complained herein.

15 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Louis Manasse is the plaintiff, and Jesse Spalding, collector of customs for the port and district

of Chicago, is the defendant, as the same appear from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this twenty-sixth day of February, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

16 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Louis Manasse, plaintiff (gen. number 19354), and Jesse Spalding, collector of customs, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Endorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs, &c., plaintiff in error, *vs.* Louis Manasse, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S., northern district of Illinois.

17 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Louis Manasse, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 18 , pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Jesse Spalding is plaintiff in error, to show

cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, dist. judge, presiding in circuit court, this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) 19354. Supreme Court of the United States. Jesse Spalding vs. Louis Manasse. Citation to October term, A. D. 18 .

(Indorsement on cover:) No. 278. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. Louis Manasse. N. Illinois C. C. U. S. - Filed June 8, 1886.

In the Supreme Court of the United States

OCTOBER TERM, 1895.

JESSE SPALDING, collector, etc., vs. LOUIS MANASSE. } No. 275.

SAME vs. SAME. } No. 276.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, collector, etc., *vs.* LOUIS MANASSE. } No. 278.

SAME, *vs.* SAME. } No. 279.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

These are suits against the collector for the port and district of Chicago to recover an alleged excess of duties exacted by him from the plaintiff below on two several importations of "anemometers, hygrometers, Rhumkorf coils, aneroid ba-

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rometers, stereopticons, galvanometers, Geissler tubes, Grenet batteries, and radiometers" (p. 5).

These goods were entered and claimed as "philosophical apparatus and instruments," dutiable at 35 per cent. ad valorem under Schedule N, act March 3, 1883 (22 Stat., 513), but were classified by the collector (p. 5) as "manufactures, articles, or wares not specially enumerated or provided for in this act [March 3, 1883], composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, gold, silver, platinum, or any other metal, and whether wholly or partly manufactured," and a duty of 45 per cent. was assessed on them, and the court finds that "the goods were manufactured articles composed wholly or in part of some of the metals enumerated in the act quoted."

The court finds "that the instruments involved in this invoice are adapted to the purposes of scientific instruction, and are also capable of being to some extent utilized by those sufficiently educated to apply them to certain purposes in the arts;" and concludes that "they must therefore be allowed to come under this general de-

scription as 'philosophical instruments and apparatus'" (pp. 5, 6).

Accordingly, judgment went in each case for the amount claimed with costs (p. 6).

ASSIGNMENT OF ERROR.

It was error to render judgment on the special finding for the plaintiff below.

ARGUMENT.

The argument which led the learned court below to its conclusion gives a scope and comprehensiveness to the terms "philosophical apparatus and instruments" which we submit it is not reasonable to suppose Congress intended (See opinion in appendix.)

When an instrument is adapted to industrial, practical purposes it is, we conceive, no longer "philosophical," although as much as ever applicable to the ends of instruction.

If the view of the court below is correct, then, it would seem, that lightning-rods should be classed as "philosophical," for in their origin they were as purely "philosophical" and as far

from industrial as anything could be. They are quite as useful now as ever for affording proof that lightning and the electric spark are one and the same thing, and as we are in the infancy of that part of physics that relates to electrical phenomena, it is fair to conclude that the time is far distant when lightning-rods will cease to be of scientific use.

The same may be said of the Leyden jar, but it would seem to be going very far to class it now as "philosophical," seeing that it has gone so generally into practical use, preserving, however, its value as an instrument for instruction in the laws of electricity.

The safe line of distinction would seem to be that when an instrument once appropriated for purposes strictly scientific is applied to practical uses, it ceases to be scientific or philosophical in the sense of the tariff.

The view taken by the learned court below seriously tends to impair the protection to home industries, which it was the policy of the tariff to afford, by letting in at a lower rate of duty things which, if not classed as "philosophical," might

not come in at all or to the same extent as they would if so classed.

But we submit that the learned court was egregiously wrong in saying that several of the articles entered were "philosophical."

In what sense is an *anemometer* "philosophical"? You might just as well call a steam-gauge or a gas-meter philosophical, for the anemometer only tells us the velocity of the wind. In short, it measures what we knew to exist before the instrument was ever thought of and does not illustrate a single law of the atmosphere.

The same may be said of the hygrometer, which enables us to learn no natural law, but simply assists us to detect the quantity of moisture in the atmosphere by giving us the dew-point. The hygrometer teaches nothing that a glass of ice water does not teach much better. But when a person, desiring to occupy a new house, wants to find out whether the plastering is quite dry he may go with profit to the hygrometer.

It was equally inapt to term a *galvanometer* "philosophical." It is an instrument which is

necessary to all persons using or making electrical instruments; for, like the steam-gauge, it tells how much power is present in the galvanic battery. But what philosophical or scientific purpose does the galvanometer answer?

We come now to the "*Rhumkorf coils.*" These coils of wire are used to produce the phenomenon of electrical induction, and are used in illustrating that phenomenon by teachers of physics, but they are also used in every telegraph office, and as a necessary part of the apparatus for exploding charges in mines, in quarries, in deepening the beds of rivers, and elsewhere. To call such an appliance "*philosophical*," really seems going so far as giving a similar classification to the siphon, which would hardly be dutiable, nowadays, as an implement of science.

The "*Aneroid barometers*," like the Rhumkorf coils, have long since ceased to be "*philosophical.*" The learned court below would have found it hard to determine that the Davy lamp should be ranked as a scientific instrument, and yet it was the result of a discovery made by a great scientist and is no more in practical use than the aneroid

barometer. Surely the court would not have said that the mariner's compass is dutiable at 35 per cent. as a philosophical instrument?

"*Stereopticons*" do not appear to be of much scientific use, and we doubt if one is ever purchased to be used for a purely philosophical purpose. But the instrument is mostly used in giving entertainment by throwing magnified pictures or representations on a screen, or for displaying advertisements from elevated points in the streets of cities, and is hardly "philosophical" or "scientific."

"*Geissler tubes*," however, may be purely scientific. This appliance is used for getting the spectrum of any gas. The tube containing the gas is placed in connection with a galvanic battery, the sparks from which make the gas incandescent, and the spectroscope does the rest. While the spectroscope is used in the mechanic arts, such as in making steel by the Bessemer process, to detect the presence of gases, we are not sure that the Geissler tube is employed for this purpose in connection with it. Certainly in the manufacture of steel the furnace flames

would seem to answer for the purposes of the spectroscope.

"*Grenet batteries*" are nothing more than the ordinary galvanic battery. If the steam-boiler is *scientific*, then is this species of battery.

"*Radiometers*" are beautiful scientific toys. They are thus described in the Encyclopedia Britannica (vol. 19, p. 249, 9th ed.):

> The typical form of the radiometer is a glass bulb, in which is hung a delicately poised arrangement of vanes. These, usually four in number, are fixed at the extremities of two light horizontal cross-rods, which are supported so as to be capable of easy rotation about a central vertical axis. The vanes or disks are set in vertical planes passing though the axis, and each has its one side bright and the other blackened. For any rotation the motion of each vane is exactly alike—that is, either the bright faces all move first, or the dark faces do so. If the pressure of the gas inside the bulb is reduced to a very low exhaustion, the vanes under the action of light or heat will begin to rotate. The mere bringing the radiometer out of a dark region into daylight is enough to set up this rotation. In ordinary circumstances the dark faces are apparently repelled, and the vanes move round with their bright faces in advance.

The black surfaces of the vanes absorbing more heat and light, and therefore radiating more heat than the burnished ones, the resistance of the rarified gas inside the bulb to the process of radiation makes the vanes rotate, just as the resistance of the atmosphere gives motion to the rocket.

This pretty contrivance of Crooke's to illustrate a previously unknown dynamical value in radi-

ation is philosophical in the strictest sense, we should suppose.

As already intimated, the tariff, in cases of doubt as to classification, should be interpreted in subordination to the principle of protection to home industry that pervades it. Otherwise, to take this case for illustration, our markets will be flooded with all sorts of mechanical contrivances, introduced under the pretense of being valuable for scientific instruction, thus crippling to some extent domestic manufactures that were intended to be protected. It is respectfully submitted that to adopt the views of the court below would seem to be an abuse of the liberality and indulgence of Congress towards the cause of education.

We ask that the judgment may be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

MANASSE *v.* SPALDING.

(*Circuit Court, N. D. Illinois.* May 26, 1885.)

1. CUSTOM DUTIES—PHILOSOPHICAL INSTRUMENTS.
   Anemometers, hygrometers, Ruhmkorf coils, barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, radiometers, *held* to be dutiable, as "philosophical apparatus and instruments," at the rate of 35 per cent. *ad valorem*.
2. SURVEYORS' COMPASSES.
   Held to be dutiable at 45 per cent. *ad valorem*.

At Law.

Percy L. Shuman and *Jo. H. Defrees, jr.*, for plaintiff.

Chester M. Dawes, Asst. U. S. Atty., for defendant.

BLODGETT, J. (*orally*). In November and December, 1883, the plaintiff imported several invoices of anemometers, hygrometers, Ruhmkorf coils, barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, radiometers, and surveyors' compasses, and a duty of 45 per cent. *ad valorem* was assessed on them, under the last clause of Schedule C of the tariff act of March 3, 1883, which reads as follows (Heyl, pt. 2, p. 13, cl. 216):

> Manufactures, articles, or wares, not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, 45 per cent. *ad valorem*.

The plaintiff insisted that these goods were only subject to a duty of 35 per cent. *ad valorem* under Schedule N of the same act (Heyl, pt. 2, p. 31, cl. 475), as "philosophical apparatus and instruments," and the only question in the case is, what is meant by the term "philosophical apparatus and instruments" as here used. The testimony in the case shows that goods of this kind are

sold mainly to schools and institutions of learning, and to persons engaged in scientific pursuits and observations. When an instrument or apparatus involves the illustration of some principle of natural philosophy or natural science, it may be properly termed, I think, "a philosophical instrument," within the meaning of this clause. But it is insisted that instruments of this character have now gone into such general use in the arts and in business that they have become mere implements or tools of trade. While I must admit there is some force in the argument, yet I do not see where the line can be safely drawn in the application of this rule. The barometer, for instance, is an instrument devised for the purpose of indicating the weight or pressure of the atmosphere, and acts wholly in obedience to certain natural laws, and illustrates such laws; but it has come into very general use, and is no longer an instrument used only for illustrating the principles of natural science. It is used as a "weather-glass" by many people who are not engaged in scientific pursuits or scientific instruction, who are only interested in its indications for the purpose of forecasting the weather, or to gratify their curiosity. The same may be said of the thermometer and hygrometer; but still these instruments are part of the apparatus used for instruction and information in various ways in relation to scientific subjects, and the universality of their use does not detract from their character as philosophical instruments. If thermometers and hygrometers are so constructed as to be obviously intended for use only in some special branch of business or trade, as in that of brewing and distilling, for instance, they might then be deemed implements of trade for that purpose; or the thermometer used by the physician for determining the temperature of the patient might be held to be an implement of his calling or profession, because it is peculiarly adapted to that purpose, and, perhaps, to none other. But the instruments involved in this invoice are adapted, as the proof shows, to the purposes of scientific instruction, and are also capable of being, to some extent, utilized by those

sufficiently educated to apply them to certain purposes in the arts. They must, therefore, be allowed, as it seems to me, to come under this general description as "philosophical instruments and apparatus," and are only subject to a duty of 35 per cent. *ad valorem*. Surveyors' compasses, which are also included in this invoice, it seems to me are more properly described as "mathematical instruments," and not as "philosophical instruments." A surveyor's compass is something more than a mere needle which indicates the direction of the magnetic meridian. It is a combination of sights, levels, graduated arcs, etc., with the needle, for certain specific purposes, like that of running lines, adjusting boundaries, etc.; and as such they seem to me to be more accurately described as mathematical instruments or implements of trade.

The finding will therefore be for the plaintiff as to all these goods except the surveyors' compasses.

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APR 27 1868
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1868.

No. 278.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LOUIS MANASSE, DEFENDANT IN ERROR.

SAME *vs.* SAME.—No. 279.

BRIEF OF DEFENDANT IN ERROR.

PERCY L. SHUMAN,
For Defendants in Error.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 278.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LOUIS MANASSE, DEFENDANT IN ERROR.

SAME *vs.* SAME.—No. 279.

BRIEF OF DEFENDANT IN ERROR.

BRIEF OF ARGUMENT.

The defendant in error imported, at the port of Chicago, on or about the first of March, 1884, a quantity of Rhumkorf coils, Aneroid barometers, stereopticons, galvanometers, Geissler tubes, Grenat batteries, and radiometers, which he claimed were dutiable at the rate of 35 per centum ad valorem as "philosophical apparatus and instruments," under the provision of paragraph 475 of the tariff act of March 3, 1883 (Heyl's Tariff). The collector of customs (plaintiff in

error) classified the goods in question as dutiable at the rate of 45 per centum ad valorem, under the provision of paragraph 216 (Schedule "C") of the act of March 3, 1883, for—

"Manufactures, articles, or wares, *not specially enumerated or provided for in this act*, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem."

Defendant in error paid the rate and amount of duties assessed by the collector in order to obtain possession of the goods, and within ten days after the ascertainment and liquidation of the duties by the collector filed with the collector a protest in writing, as required by law, setting forth specifically the grounds of his objection to the rate and amount of duties assessed and liquidated by the collector, and within thirty days after the date of the liquidation appealed therefrom to the Secretary of the Treasury. The decision of the Secretary was had upon the appeal sustaining the action of the collector, and within ninety days thereafter the defendant in error brought suit to recover from the plaintiff in error the excess of duties, being the difference between 35 per centum and 45 per centum ad valorem, amounting to ninety-one dollars and thirty-five cents, with interest thereon from the date of such wrongful payment.

A trial was had in the circuit court before Blodgett, judge, without a jury, and a special finding was rendered (Record, page 5) to the effect that "the proof shows the instruments involved in this invoice are adapted to the purposes of scientific instruction, and are also capable of being, to some extent, utilized by those sufficiently educated to apply them

to certain purposes in the arts. They must, therefore, be allowed to come under this general description as 'philosophical instruments and apparatus.'"

There was also a general finding of the issues for the plaintiff, and judgment was rendered for the sum claimed in the plaintiff's declaration, namely, ninety-one dollars and thirty-five cents, with interest and costs. (Record, page 6.)

The court has made a special finding—a statement of the ultimate facts on which the law must determine the rights of the parties. The parties are concluded as to the facts found. (Norris *vs.* Jackson, 9 Wall., 125.)

The only question, then, is whether the facts as found require a judgment for plaintiff or defendant.

The court, having found that the goods in question are "philosophical instruments and apparatus," as claimed by the defendant in error, it would seem to be obligatory upon the court to render a judgment in favor of the plaintiff, as the rate of duty upon "philosophical instruments and apparatus" is 35 per centum, regardless of the material of which they may be composed.

The special finding states that the goods were claimed as "philosophical apparatus and instruments," dutiable at 35 per centum *ad valorem* (Rec., page 5). This claim is sustained by the court's finding, and the defendant in error is unable to discover any error therein, or in the judgment rendered thereon.

The learned counsel for the Government call attention to the opinion of the learned circuit judge. We are satisfied that, from the standpoint of the case as presented in the court below, the grounds of the court's opinion are in all respects a proper basis for the conclusions arrived at.

1. "The testimony in the case shows that goods of this kind are sold mainly to schools and institutions of learning and to persons engaged in scientific pursuits and observations."

2. "These instruments are part of the apparatus used for instruction and information in various ways in relation to scientific subjects, and the universality of their use does not detract from their character as philosophical instruments."

3. "But the instruments involved in this invoice are adapted, as the proof shows, to the purposes of scientific instruction, and are also capable of being to some extent utilized by those sufficiently educated to apply them to certain purposes in the arts."

The arguments of counsel representing the Government were pressed upon and carefully considered by the court, and the distinctions drawn, as shown by the fact that surveyor's compasses were distinguished from the philosophical instruments in the case, and held not to be subject to the same classification with the other goods, [redacted] of the correctness of the finding.

PERCY L. SHUMAN,
For Defendant in Error.

TRANSCRIPT OF R

SUPREME COURT OF THE UNIT

October Term, 1858.

No. 190.

JESSE SPALDING, COLLECTOR OF CUST
PORT AND DISTRICT OF CHICAGO,
ERROR,

vs.

JOSEPH VANAGKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED
NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 4, 1859.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 280.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOSEPH VANACKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday, the first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY,
Clerk.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourteenth day of February, 1884, came the plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois at Chicago, in said district, his præcipe for a writ of summons and a bond for costs in said above-entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern Dist. of Illinois, ss:

United States circuit court N. Dist. of Illinois, March term, A. D. 1884

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS, &C. } Assumpsit. Damages $500.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises, to the damage of said plaintiff in the sum of five hundred dollars, and direct the same to the marshal of the said district to execute, and make it returnable to the March term of said court, A. D. 1884.

STORCK & SHUMAN,
Plaintiff's Attorneys.

To WM. H. BRADLEY, Esq., *Clerk.*

CHICAGO, *February* 14, 1884.

(Endorsed:) Filed Feb'y 14, 1884. Wm. H. Bradley, clerk.
23304——1

3 *Bond.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, March term, A. D. 1884.

VANACKER
vs.
SPALDING, COLLECTOR, &C. } In assumpsit. Damages $500.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 14th day of February, A. D. 1884.

STORCK & SHUMAN,
Pl'ff's Attys.

(Endorsed:) Filed Feby. 14th, A. D. 1884. Wm. H. Bradley, clerk.

On the same day to wit, on the fourteenth day of February, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

4 *Summons.*

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs, etc., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of March next, to answer unto Joseph Vanacker of a plea of trespass on the case upon promises, to his damage, as he alleges, of five hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 14th day of February, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 108th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ personally upon the within named Jesse Spalding, collector, &c., by delivering to him a true copy thereof this 14 day of February, A. D. 1884.

A. M. JONES,
U. S. Marshal,
By S. C. HAYES,
Deputy.

(Endorsed:) Filed Mch. 3d, A. D. 1884. W. H. Bradley, clerk.

Afterwards, to wit, on the first day of March, 1884, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois, to the March term, 1884.

Joseph Vanacker, plaintiff in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiff to have been illegally exacted of him, and by him paid under protest), by Storck & Shuman, his attorneys, complain of Jesse Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

6 For that whereas the said plaintiff heretofore, to wit, on the twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-three at, to wit, the northern district of Illinois, made payment to the said defendant, collector, as aforesaid, of a certain large sum of money, to wit, the sum of fifty-three dollars and cents, lawful money of the United States, as duties, under protest, and in order to obtain possession of certain rubber bags, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs, he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said de-

fendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection thereto, and that
7 within thirty days after the date of the ascertainment and liquidation as aforesaid, plaintiff appealed to the Secretary of the Treasury of the United States. And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of fifty-three dollars and cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiff as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year, and at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said plaintiff afterwards, to wit, on the eighteenth day of June, A. D. 1883, at, to wit, the port and district aforesaid, made payment to the said defendant collector as aforesaid, of a certain other large sum of money, to wit, the sum of fifty-eight dollars and cents, lawful money of the United States, as duties, under protest,
8 and in order to obtain possession of certain other rubber bags, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been
9 brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of fifty-eight dollars and cents, lawful money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiff as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in con-

sideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said plaintiff afterwards, to wit, on the seventh day of August, A. D. 1883, at, to wit, the port and district aforesaid, made payment to the said defendant collector as aforesaid, of a certain other large sum of money, to wit, the sum of thirty-two dollars and seventy cents, lawful money of the United States, as duties, under protest, and in order to obtain possession of certain other rubber bags, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such
10 collector, and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

And the said plaintiff avers that within ten days after the ascertainmen and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal.

By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of thirty-two dollars and seventy cents, lawful money as aforesaid, so illegally demanded of, and under protest
11 paid by, the said plaintiff, as aforesaid, and being so liable, the said defendant afterwards, to wit: On the day and year and at the district aforesaid, in consideration thereof undertook, and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said plaintiff afterwards, to wit, on the twenty-ninth day of September, A. D. 1883, at, to wit, the port and district aforesaid, made payment to the said defendant, collector as aforesaid, of a certain other sum of money, to wit, the sum of thirty-two dollars and seventy cents, lawful money of the United States, as duties, under protest and in order to obtain possession of certain other rubber bags, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector;

and the said plaintiff avers that said sum of money above specified so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff.

12 And the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein, distinctly and specifically, the ground of his, the said plaintiff's, objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiff appealed to the Secretary of the Treasury of the United States.

And the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeal, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeal. By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of thirty-two dollars and seventy cents, lawful money as aforsaid, so illlegally demanded of, and under protest paid by, the said plaintiff as aforesaid, and being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

13 And whereas also, the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of five hundred dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, whenever the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, etc.,) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiff in the sum of five hundred dollars, and therefor the said plaintiff brings his suit, &c.

STORCK & SHUMAN,
Plaintiff's Attorneys.

(Endorsed:) Filed Mar. 1, 1884. Wm. H. Bradley, clerk.

14 Afterwards, to wit, on the fifth day of March, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea

in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, March term, 1884.

JESSE SPALDING, COLLECTOR, ETC., *ats.* JOSEPH VANACKER. } No. 18877. Assumpsit.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form, as the said plaintiff has above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD TUTHILL,
U. S. attorney, for Defendant.

(Endorsed:) Filed March 5th, 1884. Wm. H. Bradley, clerk.

15 Afterwards, to wit, on the ninth day of March, in the adjourned March term, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOSEPH VANACKER *vs.* JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

Now come the plaintiff, by his attorneys, and the defendant, by the district attorney, and upon issue joined herein, by agreement they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence the court takes this cause under advisement.

16 Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

In the circuit court of the United States, northern district of Illinois.

VANACKER *vs.* SPALDING, COLL'R, &C. }

The court finds from the proof the facts in this case to be as follows: That the goods in question were small india-rubber bags or pouches in-

tended for inflation with gas, in order to make a small balloon to be used as a child's plaything.

The goods are not toys in the form in which they are imported.

The pouches were complete, and nothing is done to make the balloon except to inflate and secure the same.

The goods were entered and claimed as articles composed of india-rubber, not specially enumerated or provided for, dutiable at 25 per cent. ad valorem; they were classified by the appraiser as toys, and duty assessed thereon at 35 per cent. ad valorem.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

17 On the same day, to wit, on the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS for the port and district of Chicago. } Assumpsit.

Now come the parties, by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiff and assesses his damages at one hundred and twenty-three dollars and forty cents, with interest thereon from the time the same was paid to the defendant, and costs.

It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of one hundred and twenty-three dollars and forty cents, his damages, with interest thereon from the time the same was paid to the defendant, together with his costs in this behalf, amounting to twenty-four dollars and ninety-six cents, and that he have execution therefor.

18 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOSEPH VANACKER
vs.
JESSE SPALDING, COLLECTOR of customs for the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant as complained herein.

19 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Joseph Vanacker is the plaintiff and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this eleventh day of March, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

20 UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

The United States of America, to the judges of the circuit court of the United States, for the northern district of Illinois, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is before you in said circuit court between Joseph Vanacker, plaintiff (gen. number 18877), and Jesse Spalding, collector of customs, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Jesse Spalding, collector of customs, defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eighty-six and the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs, &c., plaintiff in error, vs. Joseph Vanacker, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.